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Applicant (s): James C. Stevens, et al.

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CATALYSTS

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Sir:

PRELIMINARY STATEMENT

USSN 07/545,403, the parent application from which this divisional application depends was involved in numerous interferences, including 102,953, 102,954, 102,955, 103, 067, 103,404, and 103,819¹. Further prosecution thereof has been suspended since July 20, 1992. Recently, the last remaining of these interferences, 102,954, 102,955, 103, 067, and related interferences 103,112, 103,113 and 103,114 terminated with adverse judgements against the above identified coinventors or portions thereof.

The claims of the present application are all limited to certain catalyst compositions containing a constrained geometry titanium complex and certain non-alumoxane cocatalysts, as well as polymerization process using such compositions.

¹ Copies of the foregoing Final Decisions and Judgements in interferences 102,953, 102,954, 102,955, 103,067 and 103,819 are attached hereto. In addition, Interferences 102,953, 102,954 and 102,955 had redeclarations of the interference. Entry of all of the foregoing to the record of this application is requested.

Because the present claims are based on and essentially the same as claims that were held by the Board of Patent Appeals and Interferences to constitute a separate patentable invention, the present claims are believed to be patentable to the above identified applicants.

Evidence of the patentably distinct nature of the present claims over the lost counts of the foregoing interferences is found in the Final Decision in interference 102,954 in which the Board of Patent Appeals and Interferences stated that claims 29 and 30 (which also related to the use of non-alumoxane cocatalysts, the same subject matter as present claims 1-6) did not correspond to the count of that interference.² Moreover, in the redeclaration of that interference accompanying the decision, claims 27-30 of application 07/545,403 were not designated as corresponding to the count. (The count of that interference related to catalysts containing alumoxane cocatalysts).³

Moreover, because the present claims are all limited to titanium containing compositions, the same are patentably distinct for that reason as well. Evidence of this fact is found in the decision by the Administrative Patent Judge on preliminary motions in interference 102,953 in which the titanium subgenus was declared to constitute a separate patentable invention and a separate interference, 103,819 related thereto, was declared. Ultimately, the final decision in that interference awarding priority to Stevens et al.⁴ In addition, in the final decisions of the Board of Patent Appeals and Interferences in interferences 102,953, 102,954, 102,955 and 103,067, the party Stevens et al.'s. motions to add a titanium subgenus to those interferences were dismissed as moot in view of the aforesaid decision on preliminary motions and final decisions.⁵ In other words, the Administrative Patent Judge found that neutral

² See, Final Decision, Interference 102,954, page 59.

³ See, Redclaration of Interference, 102,954, page 4, attached hereto.

⁴ Interference 103,819 involved the party Stevens et al.'s claims 148 and 149 and the party Canich's United States Patent 5,096,867 and reissue application, 08/872,119, filed June 2, 1997. Judgement was awarded to the party Stevens et al. on November 23, 1998.

⁵ Copies of the Final Decisions and Judgements in interferences 102,953, 102,954, 102,955, 103,067 and 103,819 are attached hereto. In addition, Interferences 102,953, 102,954 and 102,955 had redeclarations of the interference. Entry of all of the foregoing to the record of this application is requested. The Examiner's attention is particularly directed to the following pages of each Final Decision: Interference 102,953, Paper No. 578, page 50, Interference 102,954, Paper No. 681, pages 60-61, and Interference 102,955, Paper No. 524, pages 55-56.

titanium complexes constituted a separate patentable invention from the genus of Group 4 metal complexes containing the same ligand structure. It therefor follows that subsequent derivatives formed from such neutral metal complexes, particularly those derivatives having utility as olefin polymerization catalysts, the specific utility disclosed for the present compositions, are also patentably distinct from claims or counts involving compositions containing other generic, Group 4 metal complexes.

Accordingly, based on the decision of the Board, it must be concluded that the present claims are patentably distinct over any counts lost in interferences 102,953, 102,954, 102,955, and 103,067. In addition, because claims 27-30 were previously found in condition for allowance, excepting for the existence of an interference, present claims 1-6 are believed to be patentable over the references of record in the parent application, over the lost counts of interferences 102,953, 102,954, 102,955, and 103,067, and over all previous claims granted in Applicants' previously granted related patents, USP 5,703,187 and USP 6,013,819.⁶

Enclosed with this preliminary statement is a terminal disclaimer which is presented for inclusion in the record. The purpose of this terminal disclaimer is to obviate any possible obviousness type double patenting rejection over USP's 5,064,802 and 5,132,380. These patents contain claims to activated metal complexes formed from Bronsted acid salts of certain non-coordinating anions. This class of catalyst composition is believed to be both a species within the genre of the present claims, e.g., activators containing non-coordinating anions, and to constitute a genus of which the present claims are a species, i.e., ammonium compounds, a type of Bronsted acid salt.

Because the present claims are similar to claims that have been previously examined and found allowable prior to declaration of the previously mentioned interferences, the same are believed to be in condition for allowance at this time.

⁶ The claims of USP 5,703,187 relate to novel ethylene/ vinylaromatic copolymers. The claims of USP 6,013,819 are directed to constrained geometry metal complexes in the +3 oxidation state

Accordingly, examination and allowance of claims 1-6 at an early date is solicited. Early favorable consideration is requested.

Respectfully submitted,



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